

**IN THE UNITED STATES DISTRICT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

WALTER WREN WYATT, III)	
Plaintiff,)	
)	
vs.)	CIVIL CASE NO.: 1:07-CV-0326-MHT
)	
MORTGAGE ELECTRONIC)	
REGISTRATION SYSTEMS, INC.;)	
R. JAMES NICHOLSON in his)	
capacity as Secretary of Veterans)	
Affairs; JOSHUA MELLOR;)	
NATALIE MELLOR, et al.)	
Defendants.)	

MOTION TO DISMISS OR SUMMARY JUDGMENT

Come now Defendants, **Joshua Mellor** and **Natalie Mellor**, by and through their attorney, and show unto the Court as follows:

Defendants Joshua and Natalie Mellor filed the following Motion To Dismiss in the Circuit Court of Coffee County, Alabama on March 23, 2007 while the case was still pending in the state court prior to removal of the case to this Honorable Court. This motion is re-submitted.

Plaintiff, Walter Wren Wyatt, III executed a mortgage on February 14, 2001 to Defendant Mortgage Electronics Registration Systems, Inc (MERS) referred to in Plaintiff's Complaint which is adopted by reference;

The Real Estate is commonly known as 109 Pratt Drive, Enterprise, Coffee County, Alabama;

The real estate owned by Plaintiff at 109 Pratt Drive was rented or leased by Plaintiff to Tenant, Deena L. Baugh, who was in possession of the said house at the time of, and on the date of foreclosure.

Foreclosure of the mortgage was held on April 6, 2006. Copies of the foreclosure are recorded in the Office of the Judge of Probate for Coffee County, Alabama and will be produced in support of this motion at the hearing on this motion.

Immediately following foreclosure, the Owner and Tenant were given notice in writing to deliver possession of the premises within ten (10) days. Written notice dated April 10, 2006 required by §6-5-251 CODE OF ALABAMA given to Plaintiff and Tenant. (This letter will be proven by Affidavit to be filed and/or presented at the hearing set on this motion).

The Plaintiff Owner could not be located other than the address of the premises and could not be otherwise found.

Section 6-5-251, CODE OF ALABAMA, provides that possession of the land must be delivered to the purchaser(at foreclosure) by the owner or tenant. This code section further provides that "...notice to the tenant is sufficient and he must deliver possession within 10 days".

The Plaintiff and the tenant failed to deliver possession within the ten (10) days (Proof will be submitted at the hearing set on this motion) and pursuant to §6-5-251, CODE OF ALABAMA:

Failure of the debtor or mortgagor (Plaintiff herein) or anyone holding possession under him or her (tenant herein) to comply with the provisions of this section forfeits the right of redemption of the debtor or one holding possession under the debtor

Wherefor, as a matter of law Plaintiff has no redemptive rights and the Complaint against these Defendants should be dismissed with prejudice.

Respectfully submitted,

/s/ Richard W. Whittaker

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

1. John L. McClung at johnlmc@graceba.net;
2. James Asberry Byram, Jr. at jbyram@balch.com;
3. Louis Michael Calligas at lcalligas@balch.com; and
4. R. Randolph Neeley at Rand.Neeley@usdoj.gov.

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None.

Respectfully submitted,

/s/ Richard W. Whittaker

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